

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	Cause No. 1:16-cr-0105-JRS-MJD
)	
ELIJAH LOPEZ,)	- 02
)	
Defendant.)	

Magistrate Judge's Report and Recommendation

This matter is before the undersigned according to the Order entered by the Honorable James R. Sweeney, directing the duty magistrate judge to conduct a hearing on the Petition for Warrant or Summons for Offender Under Supervision ("Petition") filed on December 5, 2019, and to submit proposed Findings of Facts and Recommendations for disposition under 18 U.S.C. §§ 3401(i) and 3583(e). Proceedings were held on August 19, 2020, in accordance with Rule 32.1 of the *Federal Rules of Criminal Procedure*.¹

On August 19, 2020, defendant Elijah Lopez appeared in person with his appointed counsel, Dominic Martin. The government appeared by Peter Blackett, Assistant United States Attorney. The United States Probation Office ("USPO") appeared by Officer Angela Smith, who participated in the proceedings.

¹ All proceedings were recorded by suitable sound recording equipment unless otherwise noted. *See* 18 U.S.C. § 3401(e).

The court conducted the following procedures in accordance with *Federal Rule of Criminal Procedure* 32.1(a)(1) and 18 U.S.C. § 3583:

1. The court advised Mr. Lopez of his right to remain silent, his right to counsel, and his right to be advised of the charges against him. The court asked Mr. Lopez questions to ensure that he had the ability to understand the proceedings and his rights.

2. A copy of the Petition was provided to Mr. Lopez and his counsel, who informed the court they had reviewed the Petition and that Mr. Lopez understood the violations alleged. Mr. Lopez waived further reading of the Petition.

3. The court advised Mr. Lopez of his right to a preliminary hearing and its purpose in regard to the alleged violations of his supervised release specified in the Petition. Mr. Lopez was advised of the rights he would have at a preliminary hearing. Mr. Lopez stated that he wished to waive his right to a preliminary hearing and stipulated that there is a basis in fact to hold him on the specifications of violations of supervised release as set forth in the Petition.

4. The court advised Mr. Lopez of his right to a hearing on the Petition and of his rights in connection with a hearing. The court specifically advised him that at a hearing, he would have the right to present evidence, to cross-examine any witnesses presented by the United States, and to question witnesses against him unless the court determined that the interests of justice did not require a witness to appear.

5. Mr. Lopez, by counsel, stipulated that he committed Violation Number 1 set forth in the Petition as follows:

<u>Violation Number</u>	<u>Nature of Noncompliance</u>
1	“The defendant shall not commit another federal, state or local crime.”

On December 2, 2019, Mr. Lopez was arrested in Monroe County, Indiana, (55D01-1912-F6-002112) on charges of felony, Auto Theft; felony, Resisting Law Enforcement; and misdemeanor, Operating a Vehicle without having Received a License.

6. The court placed Mr. Lopez under oath and directly inquired of Mr. Lopez whether he admitted Violation Number 1 of his supervised release set forth above. Mr. Lopez admitted the violation as set forth above.

7. Government orally moved to dismiss the remaining violations, which motion was granted by the Court.

8. The parties and the USPO further stipulated:

- (a) The highest grade of Violation (Violation 2) is a Grade B violation (U.S.S.G. § 7B1.1(a)(2)).
- (b) Mr. Lopez's criminal history category is III.
- (c) The range of imprisonment applicable upon revocation of Mr. Canter's supervised release, therefore, is 8 -14 months' imprisonment. (*See* U.S.S.G. § 7B1.4(a).)

9. The parties jointly recommended a sentence of twelve (12) months and one (1) day with no supervised release to follow. Defendant requested a recommendation of placement at FCI Terre Haute.

The Court, having heard the admissions of the defendant, the stipulations of the parties, and the arguments and position of each party and the USPO, **NOW FINDS** that the defendant, ELIJAH LOPEZ, violated the above-specified conditions in the Petition and that his supervised release should be and therefore is **REVOKED**, and he is sentenced to the custody of the Attorney General or his designee for a period of twelve (12) months and one (1) day with no supervised release to follow. The defendant is to be taken into immediate custody pending the

district court's action on this Report and Recommendation. The Magistrate Judge will recommend placement at FCI Terre Haute.

Counsel for the parties and Mr. Lopez stipulated in open court waiver of the following:

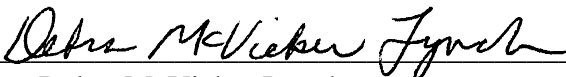
1. Notice of the filing of the Magistrate Judge's Report and Recommendation;
2. Objection to the Report and Recommendation of the undersigned Magistrate Judge pursuant to Title 28 U.S.C. § 636(b)(1)(B) and (C); and, Federal Rules of Criminal Procedure 59(b)(2).

Counsel for the parties and Mr. Lopez entered the above stipulations and waivers after being notified by the undersigned Magistrate Judge that the District Court may refuse to accept the stipulations and waivers and conduct a revocation hearing pursuant to Title 18 U.S.C. § 3561 *et seq.* and Rule 32.1 of the Federal Rules of Criminal Procedure and may reconsider the Magistrate Judge's Report and Recommendation, including making a *de novo* determination of any portion of the Report or specified proposed findings or recommendation upon which he may reconsider.

WHEREFORE, the magistrate judge **RECOMMENDS** the court adopt the above recommendation revoking Mr. Lopez's supervised release, imposing a sentence of imprisonment of twelve (12) months and one (1) day with no supervised release to follow. The defendant is to be taken into immediate custody pending the district court's action on this Report and Recommendation. The Magistrate Judge will recommend placement at FCI Terre Haute.

IT IS SO RECOMMENDED.

Date: 8/24/2020


Debra McVicker Lynch
United States Magistrate Judge
Southern District of Indiana

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